



# California Fair Political Practices Commission

March 22, 1988

Richard H. Koppes  
Chief Counsel  
California Public Employees' Retirement System  
Board of Administration  
Lincoln Plaza, 400 P Street  
Sacramento, CA 95814

Re: Your Request for Informal  
Assistance  
Our File No. I-88-032

Dear Mr. Koppes:

You have requested advice on behalf of Robert Carlson, a member of the Board of Administration of the Public Employees' Retirement System (the "PERS Board"), regarding his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

This letter confirms the telephone advice I provided to you on March 4, 1988. Our advice is limited to interpretation of the Political Reform Act. The Commission has no jurisdiction to interpret other statutes such as Government Code Section 1090. Questions about other laws should be addressed to the Attorney General's office.

Your letter states only a general question; it does not seek advice concerning a specific decision pending before the PERS Board. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed.)<sup>2/</sup>

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### QUESTIONS

1. Until recently, Mr. Carlson was a member of the Blue Shield Administrative Board. Does Mr. Carlson's former position on the Blue Shield Administrative Board or the fees he received for attending meetings of that board require his disqualification from PERS Board decisions concerning health plan contracts available to members of the Public Employees' Retirement System?

2. Does Mr. Carlson's position as trustee of Sutter Community Hospitals or the fees he receives for attending trustee meetings require his disqualification from PERS Board decisions concerning health plan contracts available to members of the Public Employees' Retirement System?

3. Does Mr. Carlson's position as trustee of Sutter Community Hospitals, his former position on the Blue Shield Administrative Board, or the fees he received for attending meetings of those boards prevent him from serving on, or participating in decisions of the PERS Board's Health Benefits Committee? The Health Benefits Committee reviews all health benefit and rate proposals and makes recommendations to the PERS Board concerning health plan contracts available to members of the Public Employees' Retirement System.

### CONCLUSIONS

1. Because Mr. Carlson has received \$250 or more in income from Blue Shield during the past year, he must disqualify himself from participating in PERS decisions regarding contracts with Blue Shield. He also must disqualify himself from participating in other PERS decisions which would foreseeably and materially affect Blue Shield. These disqualification requirements will continue until 12 months after the last date upon which Mr. Carlson's income from Blue Shield totaled \$250 or more.

2. Because Mr. Carlson receives more than \$250 in income for his services as trustee of Sutter Community Hospitals, he must disqualify himself from PERS Board decisions concerning state health plan contracts if those decisions would foreseeably and materially affect Sutter Community Hospitals.

3. Mr. Carlson may serve on the Health Benefits Committee. However, the income he received from Blue Shield will disqualify him from participating in decisions concerning the PERS contracts with Blue Shield. He also will be required to disqualify himself from any other matters before the Health

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Benefits Committee which would foreseeably and materially affect Blue Shield. These disqualification requirements will continue until 12 months after the last date upon which Mr. Carlson's income from Blue Shield totaled \$250 or more.

In addition, because he receives income from Sutter Community Hospitals, he will be required to disqualify himself from matters before the Health Benefits Committee which would foreseeably and materially affect Sutter Community Hospitals.

#### FACTS

Mr. Carlson recently was elected to a position on the PERS Board. He previously has served on the PERS Board; his last term ended in 1986.

The PERS Board, among other things, administers the Public Employees' Medical and Hospital Care Act. (Section 22751, et seq.) In so doing, the PERS Board approves and contracts with health plans for health care coverage of public employees who are members of the Public Employees' Retirement System, establishes the scope and content of those health plans, fixes standards for each plan, and fixes and adjusts rates. The PERS Board votes each year on health plan contract renewals. It also may add and terminate plans as it deems necessary.

The PERS Board has authority to establish committees. PERS Board members, in addition to their regular duties, may serve on committees to review and report on specific programs, projects or issues. One of these committees is the Health Benefits Committee.

The Health Benefits Committee primarily performs research and advises the PERS Board. It also has delegated authority to approve expansion of health plan services areas. It reviews all health benefit and rate proposals and makes recommendations to the PERS Board. In addition, it investigates and makes recommendations on any new organizations that wish to contract with the PERS Board and on optional plan designs requested by existing plans. Mr. Carlson wishes to sit on the Health Benefits Committee.

Mr. Carlson also is a director of Sutter Community Hospitals, a nonprofit entity. He has received fees totaling \$250 or more in the past 12 months from Sutter Community Hospitals for his activities as director.

In addition, until recently, Mr. Carlson served on the Blue Shield Administrative Board. Blue Shield is a nonprofit

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corporation. The Blue Shield Administrative Board is not the governing board of Blue Shield, but rather a sort of consumer board. According to Mr. Carlson, the Blue Shield Administrative Board acts as a liaison between Blue Shield and its subscribers to ensure that appropriate services are provided to Blue Shield subscribers. Blue Shield pays members of its Administrative Board \$300 for each meeting they attend, in addition to paying the members' travel expenses. Mr. Carlson attended two meetings during the past year, for which he received a total of \$600, in addition to reimbursement for travel expenses. Mr. Carlson recently informed us that he has resigned from the Blue Shield Administrative Board.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on, among other interests:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

#### Mr. Carlson's Economic Interests

Mr. Carlson has received more than \$250 in income from Sutter Community Hospitals in the past 12 months. He also has received more than \$250 in income from Blue Shield in the past 12 months. Thus, Mr. Carlson has an economic interest in both Sutter Community Hospitals and Blue Shield which could require his disqualification from decisions affecting those entities. (Section 87103(c).)

Sutter Community Hospitals is a nonprofit entity. While Mr. Carlson holds the position of trustee of Sutter Community Hospitals, he is not considered to be an officer of a business entity for purposes of the Act. Section 82005 states that a "business entity" is an enterprise operated for profit. The nonprofit status of Sutter Community Hospitals excludes it from the definition of "business entity." Accordingly, Mr. Carlson's position as trustee, by itself, is not an economic interest which could require his disqualification from PERS decisions pursuant to Section 87103(d).

#### Reasonably Foreseeable Effects on Blue Shield and Sutter

If it is reasonably foreseeable that a governmental decision will materially affect an official's economic interests in a manner distinguishable from the effect on the public generally, the official must disqualify himself from participating in the decision.<sup>3/</sup> The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood it will occur. Certainty is not required; however, if an effect is a mere possibility, it is not reasonably foreseeable. (Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983; Witt v. Morrow (1977) 70 Cal. App. 3d 817; In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The decisions of the PERS Board and its Health Benefits Committee directly affect health plans, such as Blue Shield, which contract with the PERS Board to serve PERS members. In addition, the PERS decisions may indirectly affect hospitals, such as those operated by Sutter Community Hospitals, which receive payments from Blue Shield and other health plans.

For example, Sutter Community Hospitals received more than \$9 million in payments from Foundation Health Plan for services provided in 1985. Foundation Health Plan is one of the health plans that contracts with PERS. If PERS were to decide not to renew its contract with Foundation Health Plan, it is likely that Sutter Community Hospitals would experience a decline in revenues. Thus, we conclude that the PERS decisions will foreseeably affect Sutter Community Hospitals, even though it

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<sup>3/</sup> There is no question that the PERS decisions will affect Mr. Carlson's economic interests in a manner distinguishable from the effect on the general public. Thus, we shall not discuss the "public generally" exception in this analysis.

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is possible that the lost revenues could be made up from other sources.

Material Financial Effect on Blue Shield and Sutter

Mr. Carlson is disqualified from participating in PERS decisions only if the decisions would materially affect either Blue Shield or Sutter. The Commission has adopted regulations which are useful in determining whether a particular effect is material.

Regulation 18702.1 (copy enclosed) applies when a source of income to Mr. Carlson "appears before" the PERS Board or the Health Benefits Committee by filing an application, claim, appeal or similar request. (Regulation 18702.1(a)(1).) In this situation, the effect of the decision on the source of income is considered to be material. For example, when the PERS Board or the Health Benefits Committee considers renewing Blue Shield's contract, the effect on Blue Shield is material and Mr. Carlson must disqualify himself from participating in the decision. Mr. Carlson's duty to disqualify himself from these decisions will continue until 12 months after the date when he last received income totaling at least \$250 from Blue Shield.

There may be other PERS decisions which do not involve Blue Shield directly, but would have an indirect effect on Blue Shield. If Blue Shield would be materially or "significantly" affected by any decision, Mr. Carlson must disqualify himself from participating in that decision. (Section 87103(c); Regulation 18702(a), copy enclosed.) Please contact me if you wish to discuss Mr. Carlson's participation in a specific decision.

We also must determine whether decisions of the PERS Board or the Health Benefits Committee will have a material effect on Sutter Community Hospitals. There are no contracts between PERS and Sutter Community Hospitals. Instead, the decisions in question could have only an indirect effect on Sutter Community Hospitals.

Regulation 18702(a) states the general rule that the effect of a decision is material if it is "significant." We have no more specific standard applicable to a nonprofit entity, such as Sutter Community Hospitals, in this type of situation. However, since Sutter Community Hospitals receives substantial revenues from some health care plans that contract with PERS, it appears likely that decisions concerning those health care plans would have a significant effect on the revenues of Sutter

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Community Hospitals. Accordingly, Mr. Carlson should determine which health care plans fall into this category and disqualify himself from PERS Board decisions and Health Benefits Committee decisions concerning those plans.

If you have any questions concerning this letter or if you wish to discuss a specific decision, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script, reading "Kathryn E. Donovan".

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh  
Enclosures  
cc: Robert Carlson



# Memorandum

California Public Employees' Retirement System

Document N

Date: January 11, 1988

File No.:

To: Ms. Diane Griffiths  
General Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804

From: Board of Administration  
Lincoln Plaza, 400 P Street  
Sacramento, CA

Subject: ROBERT CARLSON

Ms. Janis McLean of the FPPC Enforcement Division has advised me to contact you to obtain legal advice regarding a member of the Public Employees' Retirement System's Board of Administration, Mr. Robert Carlson.

In 1986, the FPPC Enforcement Division conducted an investigation of Mr. Carlson based upon a complaint received by your agency. The issue of possible conflict of interest by Mr. Carlson was raised because Mr. Carlson held certain positions with Sutter Community Hospitals and was an administrative member of Blue Shield while simultaneously serving as a member of the PERS Board of Administration. The PERS Board makes many decisions involving health coverage benefits for members. Shortly before or after the complaint was received by the FPPC, Mr. Carlson left the PERS Board.

In June 1987, Ms. McLean informed Mr. Carlson and PERS by letter, that the FPPC had completed its investigation and decided not to take further enforcement action against Mr. Carlson. (See attached letters from Ms. McLean.) The decision by the FPPC not to take further action was apparently based on the fact that Mr. Carlson had been advised by PERS' former Chief Counsel that he had no conflict of interest regarding decisions he made on the PERS Board which affected Sutter Community Hospitals. Ms. McLean concluded in her letter of June 1987 to PERS that "it appears that this was erroneous advice." Ms. McLean advised Mr. Carlson to contact the legal division of the FPPC for written legal advice as to whether he will need to disqualify himself on decisions affecting Sutter Hospitals if he again became a member of the PERS Board of Administration.



January 11, 1988

Mr. Carlson has in fact been recently reelected to a position on the PERS Board of Administration. He has requested that I contact you for advice on his behalf. Factual information regarding Mr. Carlson's involvement with Sutter Hospitals has already been obtained by your Enforcement Division. Ms. McLean stated that the Enforcement Division is willing to make its files available to you in this matter. However, Mr. Carlson has resigned from one of the positions he held with Sutter Hospitals since he was interviewed by Eileen Marxen of the FPPC. Thus, you may wish to re-contact Mr. Carlson to ascertain his present status. Mr. Carlson resides at 2120 Lambeth Way, Carmichael, CA 95608. His telephone number is 487-1658.

Ms. McLean also requested that I include a description of the PERS Board's involvement with health care decisions in my letter to you. The management and control of PERS is vested in its Board. The PERS Board, among other things, administers the Public Employees' Medical and Hospital Care Act (PEMHCA). (See Gov. Code sec. 22751, et seq.) The Act requires the Board to perform all functions necessary to implement PEMHCA. The Board approves and contracts with health plans, establishes the scope and content of plans, fixes standards for each plan, and fixes and adjusts rates. The Board votes each year on health plan contract renewals. It may also add and terminate plans as it deems necessary.

The law which governs PERS also grants specific authority to the Board to establish committees. Therefore, Board members, in addition to their regular duties may also serve on committees to review and report on specific programs, projects or issues. One of the committees set up by the Board of Administration is the Health Benefits Committee. This Committee acts primarily in a research and advisory capacity to the Board of Administration. It also has delegated authority to approve expansion of health plan service areas. It reviews all health benefit and rate proposals and makes recommendations to the Board. In addition, it investigates and makes recommendations on any new organizations that wish to contract with the Board and on optional plan designs requested by existing plans. Mr. Carlson wishes to sit on this Health Benefits Committee.

In light of Mr. Carlson's connections with Sutter Hospitals, may Mr. Carlson sit on the Health Benefits Committee? If he can sit on this Committee, what types of things must he do to protect himself from conflicts of interest? Could conflicts be avoided by merely disclosing his interests and position with Sutter Hospitals, or would he be required to abstain from voting on certain matters? What types of matters, if any, would he be precluded from voting on? The same questions arise regarding Mr. Carlson's position on the PERS Board when the Board deals with health care issues.

If you have any questions or concerns, please feel free to contact me. We request that you expedite your response in this matter, inasmuch as Mr. Carlson is now a voting member of the PERS Board and we all wish to avoid even the slightest appearance of impropriety.



RICHARD H. KOPPES  
Chief Counsel

RHK:cl

Attachment

cc: Robert Carlson  
Bill Ellis, PERS Board President  
Dale Hanson, PERS Executive Officer



# Memorandum

California Public Employees' Retirement System

Document N

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General Counsel  
Fair Political Practices Commission  
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In June 1987, Ms. McLean informed Mr. Carlson and PERS by letter, that the FPPC had completed its investigation and decided not to take further enforcement action against Mr. Carlson. (See attached letters from Ms. McLean.) The decision by the FPPC not to take further action was apparently based on the fact that Mr. Carlson had been advised by PERS' former Chief Counsel that he had no conflict of interest regarding decisions he made on the PERS Board which affected Sutter Community Hospitals. Ms. McLean concluded in her letter of June 1987 to PERS that "it appears that this was erroneous advice." Ms. McLean advised Mr. Carlson to contact the legal division of the FPPC for written legal advice as to whether he will need to disqualify himself on decisions affecting Sutter Hospitals if he again became a member of the PERS Board of Administration.

Mr. Carlson has in fact been recently reelected to a position on the PERS Board of Administration. He has requested that I contact you for advice on his behalf. Factual information regarding Mr. Carlson's involvement with Sutter Hospitals has already been obtained by your Enforcement Division. Ms. McLean stated that the Enforcement Division is willing to make its files available to you in this matter. However, Mr. Carlson has resigned from one of the positions he held with Sutter Hospitals since he was interviewed by Eileen Marxen of the FPPC. Thus, you may wish to re-contact Mr. Carlson to ascertain his present status. Mr. Carlson resides at 2120 Lambeth Way, Carmichael, CA 95608. His telephone number is 487-1658.

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In light of Mr. Carlson's connections with Sutter Hospitals, may Mr. Carlson sit on the Health Benefits Committee? If he can sit on this Committee, what types of things must he do to protect himself from conflicts of interest? Could conflicts be avoided by merely disclosing his interests and position with Sutter Hospitals, or would he be required to abstain from voting on certain matters? What types of matters, if any, would he be precluded from voting on? The same questions arise regarding Mr. Carlson's position on the PERS Board when the Board deals with health care issues.

If you have any questions or concerns, please feel free to contact me. We request that you expedite your response in this matter, inasmuch as Mr. Carlson is now a voting member of the PERS Board and we all wish to avoid even the slightest appearance of impropriety.



RICHARD H. KOPPES  
Chief Counsel

RHK:cl

Attachment

cc: Robert Carlson  
Bill Ellis, PERS Board President  
Dale Hanson, PERS Executive Officer



# California Fair Political Practices Commission

June 8, 1987

RECEIVED IN LEGAL

JUN 15 1987

Mr. Richard Koppes  
Chief Counsel, PERS  
1416 Ninth Street  
P.O. Box 1953  
Sacramento, CA 95809

RE: FPPC No. 86/378

Dear Mr. Koppes:

The Commission completed its investigation of the complaint received against former-PERS Board of Administration member, Robert Carlson. Based upon the information obtained, the Commission has decided not pursue additional enforcement action.

In 1984, PERS' Chief Counsel, Gerald Ross Adams, provided Mr. Carlson with written advice concluding that Mr. Carlson had no conflict of interest regarding decisions affecting Sutter Community Hospitals. Based upon our investigation it appears that this was erroneous advice. We have advised Mr. Carlson that, if, in the future, he again serves on the PERS Board of Administration, it is adviseable for him to seek new advice from the Commission's Legal Division.

Do not hesitate to call me if you have any questions.

Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Counsel  
Enforcement Division

JSM:ls



# California Fair Political Practices Commission

June 8, 1987

Mr. Robert F. Carlson  
Attorney at Law  
2120 Lambeth Way  
Carmichael, CA 95608

RE: FPPC No. 86/378

Dear Mr. Carlson:

Thank you for your cooperation in our review of the complaint filed against you. After considering all of the information obtained, we have decided not to pursue additional enforcement action in this matter.

During your interview with Eileen Marxen of our office, you indicated that you may, in the future, attempt to obtain a new position on the PERS Board. If you are successful, I suggest that you contact our Legal Division for written advice as to whether you will need to disqualify yourself on decisions affecting Sutter Community Hospitals. As a member of the board of directors of Sutter Community Hospitals, you receive \$150 per meeting and \$307 per month. The 1984 legal opinion that you received failed to note that this income made Sutter Community Hospitals a source of income to you within the meaning of the Political Reform Act's conflict of interests provisions. (Government Code Sections 87100 and 87103). This omission seriously affected the outcome of the advice.

If you have any questions, do not hesitate to contact me at (916) 322-6441.

Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Counsel  
Enforcement Division

JSM:ls



# California Fair Political Practices Commission

January 15, 1988

Richard H. Koppes  
California Public Employees'  
Retirement System  
Board of Administration  
Lincoln Plaza  
400 P Street  
Sacramento, CA 95814

Re: 88-032

Dear Mr. Koppes:

Your letter requesting advice under the Political Reform Act was received on January 13, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads 'Diane M. Griffiths'.

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Robert Carlson